

PT 97-14

Tax Type: PROPERTY TAX

Issue: Charitable Ownership/Use  
Educational Ownership/Use

STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
SPRINGFIELD, ILLINOIS

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| PLUMBERS & PIPEFITTERS LOCAL | ) |                |               |
| 514 BUILDING CORPORATION     | ) |                |               |
| Applicant                    | ) |                |               |
|                              | ) | Docket #       | 93-22-173     |
| v.                           | ) |                |               |
|                              | ) | Parcel Index # | 04-33-202-007 |
| THE DEPARTMENT OF REVENUE    | ) |                |               |
| OF THE STATE OF ILLINOIS     | ) |                |               |

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RECOMMENDATION FOR DISPOSITION

Appearances: Mr. Marc M. Pekay appeared on behalf of Plumbers & Pipefitters Local 514 Building Corporation. Mr. Robert G. Rybica, Assistant State's Attorney of DuPage County appeared on behalf of the DuPage County Board of Review.

Synopsis:

The hearing in this matter was held at 100 West Randolph Street, Chicago, Illinois, on May 8, 1996, to determine whether or not DuPage County Parcel No. 04-33-202-007 qualified for exemption during the 1993 assessment year.

Mr. Larry G. Allport, business manager of Plumbers & Pipe Fitters Local 514 (hereinafter referred to as the "Union") and Mr. Glenn Fiala, Coordinator of Plumbers & Pipe Fitters Local 514 Education Trust Fund, (hereinafter referred to as the "Education Trust Fund") were present and testified on behalf of the Plumbers &

Pipe Fitters Local 514 Building Corporation (hereinafter referred to as the "Applicant").

Mr. Clyde Kautz and Mr. Carl Peterson, members of the DuPage County Board of Review (hereinafter referred to as the "Board of Review") were present on behalf of the Board of Review and Mr. Kautz testified on behalf of the same.

The issues in this matter include first, whether the apprentice and journeymen training programs conducted by the Education Trust Fund qualified for a property tax exemption as a school, during the 1993 assessment year. The second issue is whether the applicant owned the parcel here in issue and the building and parking lot located thereon, during the 1993 assessment year. The next issue is whether the applicant qualified for exemption from real estate taxation for the 1993 assessment year. The final issue is whether this parcel and the building and parking lot located thereon were used for school purposes during the 1993 assessment year. Following the submission of all of the evidence and a review of the record, it is determined that the Education Trust Fund did not qualify as a school during the 1993 assessment year. It is also determined that, while the applicant owned this parcel and the building and parking lot located thereon during the 1993 assessment year, the applicant did not qualify for real estate tax exemption during that year. Finally, it is determined that this parcel and the building and parking lot thereon were not used for school purposes during the 1993 assessment year.

Findings of Fact:

1. The attorney for the applicant in this matter, at the beginning of the hearing, moved to amend the Application for Property Tax Exemption on its face to reflect that the applicant was seeking an exemption for school property pursuant to 35 ILCS 205/19.1. (Tr. p. 14)

2. The applicant, as the beneficial owner of Gary Wheaton Bank Trust No. 9009, acquired this parcel by a deed in trust dated March 19, 1991. (Dept. Ex. No. 1B)

3. The applicant began construction of a building on this parcel during May of 1991, which was completed and occupied during September 1991. (Tr. p. 18)

3. The applicant was incorporated pursuant to the General Not For Profit Corporation Act of Illinois, on September 12, 1991 for the following purposes:

This corporation is organized for the exclusive purpose of holding title to property, collecting the income therefrom, and turning over the entire amount thereof, less expenses, to Plumbers and Pipefitters Local 514, U.A. of the State of Illinois: but under no circumstances shall any personal or direct pecuniary gain inure to the benefit of any member.  
(Dept. Ex. No. 1I)

4. The bylaws of the applicant provide that the membership of the applicant shall be the same as the membership of the Union and withdrawal, suspension, or expulsion from the Union shall constitute withdrawal, suspension or expulsion from the applicant. (Dept. Ex. No. 1J)

5. The building on the parcel here in issue is a two story building containing 12,990 square feet. (Dept. Ex. No. 1, & Tr. p. 18)

6. During the 1993 assessment year, the applicant leased the entire building on this parcel. The applicant leased 33.7% of the building to the Union. 5.3% of the building was leased to Local 514 Pension and Welfare Funds (hereinafter referred to as the "Pension and Welfare Funds"). The remaining 61% of the building was leased to the Education Trust Fund. (Dept. Ex. Nos. 1-O, 1P & 1Q)

7. The portion of the first floor of the building used by the Education Trust Fund is described as the shop area, which was used for apprentice and journeyman training. The entire second floor of the building contains bathrooms and classrooms. The classrooms were used by the Education Trust Fund for teaching the various apprentice classes. (Tr. pp. 19 & 20)

8. During 1993, the applicant's sources of income included an assessment from each member of the union and rental income from each of the organizations leasing a portion of the building. (Dept. Ex. No. 1R, & Tr. p. 50)

9. The apprentice and journeymen training activities of the Education Trust Fund were financed by contributions from the contractors to the Fund of 30 cents per hour for each hour worked by a union member, pursuant to the collective bargaining agreement. (Appl. Ex. No. 5, & Tr. pp. 36 & 37)

10. The apprenticeship program is a five year program. The apprentices must have a job with a contractor who is a party to the collective bargaining agreement and must also attend class. (Tr. pp. 24 & 25)

11. An apprentice is required to work between 1,400 and 2,000 hours each year of the five year apprenticeship program. (Tr. p. 70)

12. The apprentices go to class each year two nights per week from 6:30 P.M. to 9:30 P.M. from Labor Day until about mid-May or until they have completed 215 classroom hours. (Tr. pp. 25 & 26)

13. The apprentices are not required to pay for any of the books, equipment or supplies used in the classes. (Tr. p. 52)

14. The contractors, in March or April, will request new apprentices and when the apprentices have qualified, they will be assigned to a contractor. (Tr. pp. 48 & 49)

15. The Education Trust Fund maintains a two year list of applicants for the apprenticeship program. When the Education Trust Fund is ready to accept applications for a new list, notice is given first to the present union members and the contractors. The notice is then sent to the various area high schools and public job referral organizations listed on Applicant's Exhibit No. 8. (Tr. pp. 38-40)

16. Persons submitting applications are required to be at least 18 years of age, have a social security card, a high school diploma or a G.E.D., a valid Illinois driver's license, must take a physical exam, a substance abuse test and must be physically able to do the work. They must also take an aptitude test. Following the aptitude test, they are interviewed by a labor trustee and a management trustee. (Appl. Ex. Nos. 6 & 7, & Tr. pp. 39 & 40)

17. A review of the apprentice class list for the 1992-1993 school year reveals that there are no names of women on that list. In addition, no evidence was offered as to how many minority members, if any, there were in this apprentice class. (Appl. Ex. No. 4)

18. During the 1992-1993 school year, there were 9 first year apprentices, 8 second year apprentices, 10 in the third year class,

17 in the fourth year class and 8 in the fifth year class, for a total of 52 apprentices in the program. (Appl. Ex. No. 4)

19. When a person is accepted into the apprenticeship program, they are required to join the Union and to pay union dues. (Tr. p. 43)

20. Before an apprentice may become a journeyman, that person must pay a \$200.00 initiation fee to the Union. (Tr. p. 44)

21. The Education Trust Fund, during 1993, was a party to a Cooperative Delivery Agreement with the College of DuPage. The College, pursuant to that agreement, administered the aptitude tests to the apprenticeship applicants and prepared the payroll checks for the teachers in the apprenticeship program. The Education Trust Fund paid the salaries of the teachers. (Appl. Ex. No. 10, & Tr. p. 36)

22. There is no evidence in the record that the teachers in the apprenticeship program are state certified.

23. The teachers in the apprenticeship program are all journeyman members of the Union. The international union provides a series of summer seminars for the teachers in the apprentice program. During 1993, the only teacher teaching in this apprenticeship program who had attended all five seminars and been certified by the international union was Mr. Fiala. (Tr. pp. 61-63 & 67)

24. The apprentices receive continuing education credits from the College of DuPage for successfully completing the courses. (Tr. p. 64) No evidence was offered that the apprentices received any credits which could be used toward an undergraduate degree at the college.

25. The apprentices are not registered students at the College of DuPage. (Tr. p. 45)

26 With the exception of the courses in related math and hydraulics related science and math, none of the courses taught in the apprenticeship program could be considered to be similar to courses taught in an ordinary college curriculum.

Conclusions of Law:

Article IX, Section 6, of the Illinois Constitution of 1970, provides in part as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

The Supreme Court long ago determined that the question of whether property is exempt from taxation, depends upon the constitutional and statutory provisions in force at the time for which the exemption is claimed. The People v. Salvation Army, 305 Ill. 545 (1922). The statutory provisions in force during 1993 concerning the exemption of real property from real estate taxation was 35 **ILCS** 205/19 *et seq.*

35 **ILCS** 205/19.1 exempts certain property from taxation in part as follows:

...and including the real estate on which the schools are located and any other real property used by such schools exclusively for school purposes, not leased by such schools or otherwise used with a view to profit....

35 **ILCS** 205/19.16 exempts certain property from taxation in part as follows:

Parking areas, not leased or used for profit, when used as a part of a use for which an exemption is provided hereinbefore...and owned by any ...school...which meets the qualifications for exemption.

It is well settled in Illinois, that when a statute purports to grant an exemption from taxation, the fundamental rule of construction is that a tax exemption provision is to be construed strictly against the one who asserts the claim of exemption. International College of Surgeons v. Brenza, 8 Ill.2d 141 (1956); Milward v. Paschen, 16 Ill.2d 302 (1959); and Cook County Collector v. National College of Education, 41 Ill.App.3d 633 (1st Dist. 1976). Whenever doubt arises, it is to be resolved against exemption, and in favor of taxation. People ex rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1944) and People ex rel. Lloyd v. University of Illinois, 357 Ill. 369 (1934). Finally, in ascertaining whether or not a property is statutorily tax exempt, the burden of establishing the right to the exemption is on the one who claims the exemption. MacMurray College v. Wright, 38 Ill.2d 272 (1967); Girl Scouts of DuPage County Council, Inc. v. Department of Revenue, 189 Ill.App.3d 858 (2nd Dist. 1989) and Board of Certified Safety Professionals v. Johnson, 112 Ill.2d 542 (1986).

The Supreme Court, in applying the language of Article IX, Section 6, of the Illinois Constitution concerning schools, to the provisions of Section 19.1 of the Revenue Act of 1939, (now 35 **ILCS** 205/19.1), has over the years developed a two-part test. First, does the school teach a course of study which fits into the general scheme



of education, and second, is the teaching of that course of study one which would otherwise be a governmental function, thereby reducing the burdens of government.

In People ex rel. McCullough v. Deutsche Gemeinde, 249 Ill. 132 (1911), at page 137, the Court stated as follows:

A school within the meaning of the constitutional provision, is a place where systematic instruction in useful branches is given by methods common to schools and institutions of learning which would make the place a school in the common acceptance of the word.

In People ex rel. Brenza v. Turnverein Lincoln, 8 Ill.2d 188 (1956), citing a Minnesota case, the Court said:

It seems clear from the foregoing that this constitutional tax exemption for private educational institutions was intended to extend only to those private institutions which provide at least some substantial part of the educational training which otherwise would be furnished by the various publicly supported schools...which to such extent, thereby lessen the tax burden imposed upon our citizens as the result of our public educational system.

The case of People ex rel. Brenza v. Turnverein Lincoln involved an organization which only taught swimming and gymnastics. At page 202, the Court stated:

In the ordinary school, physical education is a part, but only a part of the curriculum. And while instruction in swimming and gymnastics is educational in a broad sense, it is not sufficient, standing alone, to bring an institution within the scope of our statute,....

I conclude that the same could be said of the Education Trust Fund apprenticeship program which only taught related math and hydraulics related science and math of the subjects commonly taught in schools.

In Coyne Electrical School v. Paschen, 12 Ill.2d 387 (1957), the Court reaffirmed these two tests and the decisions in the previously cited cases in a case involving an electronics school.

In Winona School of Professional Photography v. Illinois Department of Revenue, 211 Ill.App.3d 565 (1st Dist. 1991), the First District Appellate Court determined that a school of photography owned by a professional trade association, Professional Photographers of America, did not qualify as a school. The Court went on to state again the two tests set forth in the Coyne case.

Concerning the Education Trust Fund Cooperative Delivery Agreement with the College of DuPage, a Public Community College, in referring to the Public Community College Act, the Court in Winona pointed out that in the establishment of technical or vocational programs the Act mandated a comprehensive program, including courses in liberal arts and sciences and general education. The Court, in that case, went on to point out that Winona offered no general education courses. The Education Trust Fund apprenticeship training program only offers the two general education courses, previously described. It is not surprising then, that the College of DuPage does not offer undergraduate course credits to the persons enrolled in this apprenticeship program.

The Education Trust Fund does not charge tuition to its apprenticeship students, because it is funded by the collective bargaining agreement between the Union and the contractors who, I conclude, are the primary beneficiaries of the apprenticeship training program. It should also be pointed out that a Union representative and a contractor representative conduct the interviews

of the prospective apprentices before they are placed on the two year list from which the apprentices are chosen.

I therefore conclude that the apprentice and journeyman programs operated by the Education Trust Fund did not qualify for exemption as a school during 1993. I also conclude that this parcel and the building and parking lot thereon were not used primarily for school purposes during 1993.

The purpose clause of the applicant provides that the income of the applicant, less expenses, shall be turned over to the Union. The bylaws of the applicant also provide that the members of the applicant shall, in essence, be the same as the Union membership. Consequently, the applicant is essentially controlled by the Union which is unquestionably not an exempt entity. The applicant's sources of funds during 1993 were assessments paid by the union members and building rentals received pursuant to the building leases. The income received by the applicant during 1993 was used primarily to pay building expenses. I therefore conclude that the applicant is merely the alter ego of the Union, and consequently did not qualify as an exempt organization and did not use this parcel primarily as a school or for exempt purposes during 1993.

I therefore recommend that DuPage County Parcel No. 04-33-202-007 and the building and parking lot located thereon remain on the tax rolls and be assessed to the applicant, the owner thereof, for the 1993 assessment year

Respectfully Submitted,

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George H. Nafziger  
Administrative Law Judge